

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 367 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

JAYABEN KISHORSINGH RATHOD

Versus

COMMISSIONER OF POLICE

Appearance:

MR NM KAPADIA for Petitioner

MS HASNABEN PUNANI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 10/08/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

2. The petitioner challenges the order of preventive detention dated 8th December, 1998 made by the

Commissioner of Police, Ahmedabad City, under the powers conferred upon him under Sub-section 1 of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as, 'the Act'], against one Kishorsingh Lalsingh Rathod, the husband of the petitioner.

3. The detenu is alleged to be a 'bootlegger' within the meaning of Section 2 (b) of the Act and his activities are held to be prejudicial to the maintenance of 'public order'. Three offences punishable under the Bombay Prohibition Act are registered against the detenu. In each of the said cases, detenu was found to be in possession of large quantity of foreign liquor. Two witnesses have given statements in respect of the nefarious activities of the petitioner, and more particularly, about the incidents that occurred on 8th November, 1998 and 15th November, 1998 when the detenu is alleged to have manhandled the concerned witness, beaten him in public and intimidated the people gathered at the spot of incident at the knife point.

4. The impugned order of detention has been challenged on several grounds. It is contended that in respect of C.R No. 44 of 1998, registered at Viramgam Police Station, the petitioner had applied for release on bail and had produced medical certificate in connection with the alibi pleaded by him. Besides, the detaining authority has taken into consideration the externment proceedings initiated against the detenu, however, the reply submitted by the detenu has not been taken into consideration. Moreover, the reports of the chemical analysis of the liquor recovered from the detenu in respect of the offence registered as C.R No. 44 of 1998 in Viramgam Police Station and C.R No. 5333 of 1998 registered in Meghaninagar Police Station have not been furnished to the petitioner.

5. It is not disputed that the above referred documents are not furnished to the petitioner nor they have been considered by the detaining authority while recording his subjective satisfaction. The said contention does not require further deliberation. While considering the materials adverse to the detenu, the detaining authority is duty bound to consider the available materials which may be favourable to the detenu. The alibi pleaded by the detenu and the reply to the notice of externment as well as reports of the chemical analysis of the liquor seized from the detenu all are vital documents and could have affected the subjective satisfaction recorded by the detaining

authority. The subjective satisfaction recorded without taking into consideration such vital documents cannot be said to be based on the comprehensive material and is, therefore, vitiated. In the circumstances, the continued detention of the detenu is invalid.

6. For the reasons aforesaid, the petition is allowed. The order dated 8th December, 1998; Annexure-A to the petition, is quashed and set-aside. Rule is made absolute. The detenu - Kishorsingh Lalsingh Rathod, unless he is required to be detained in some other case, be released forthwith.

Prakash*